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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Todd W. Seeley

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12/03/2004

Chiron Corporation
Intellectual Property R338
PO Box 8097
Emeryville, CA 94662-8097

EXAMINER

KAUSHAL, SUMESH

ART UNIT

PAPER NUMBER

1636

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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112904

DATE MAILED:

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Commissioner for Patents**INTERFERENCE**

At least claim(s) 42 of the application are believed to interfere (35 U.S.C. § 135(a)) with at least claim(s) 26 of U.S. Patent 6,593,098. The patent claims priority of U.S. (or foreign identified by country) application US 60/068,102 filed 19 Dec. 1997 and appears to be entitled to benefit for the purpose of a priority contest under 35 U.S.C. § 135(a).

The patent is not prior art under 35 U.S.C. § 102(e). See, e.g., *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966).

Nevertheless, a patent cannot be issued to applicant until it prevails in an interference with the patent.

In any interference, applicant would be the junior party.

Accordingly, applicant is required to make a showing under 37 CFR § 41.202(d) (see Notice of Final Rule, 69 Fed. Reg. 49960, 50019 (Aug. 12, 2004)) as to why it would prevail in an interference with the patent. Applicant has not presented a showing.

APPLICANT IS HEREBY GIVEN A PERIOD OF TWO (2) MONTHS TO PRESENT A SHOWING.

If a showing is timely presented, it will be forwarded to the board where it will be evaluated pursuant to 37 CFR § 41.202(e).

If at the end of the two-month period, a showing is not timely presented, the application will be forwarded to the board where it would be expected that an order to show cause would be issued pursuant to 37 CFR § 41.202(d)(2).

Note that "New evidence in support of priority will not be admitted except on a showing of good cause." 37 CFR § 41.202(d)(2); *Hahn v. Wong*, 892 F.2d 1028, 13 USPQ 1313 (Fed. Cir. 1989); *Huston v. Ladner*, 973 F.2d 1564, 23 USPQ2d 1910 (Fed. Cir. 1992). Hence, applicant should not expect to make a showing in the first instance after the application is forwarded to the board for a determination of whether an interference should be declared.

The time for responding to this Office Action cannot be extended under the provisions of 37 CFR § 1.136(a) (2003). See 37 CFR § 1.136(a)(1)(i) (2003).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumesh Kaushal Ph.D. whose telephone number is 571-272-0769. The examiner can normally be reached on Mon-Fri. from 9AM-5PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yucel Irem Ph.D. can be reached on 571-272-0781.

Sumesh Kaushal
Examiner GAU 1636



SUMESH KAUSHAL
PATENT EXAMINER